

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-138772-001 DT

11/18/2014

HONORABLE DAVID B. GASS

CLERK OF THE COURT
A. Gonzalez
Deputy

STATE OF ARIZONA

JAMES MATTHEW SEEGER

v.

JOSE RIOS (001)

ROBERT SHAWN DITSWORTH

CITS - OTHER

COMPREHENSIVE PRETRIAL CONFERENCE/TRIAL ORDERS

9:44 a.m. This is the time set for Comprehensive Pretrial Conference.

State's Attorney:	Jeffrey Duvendack for James Matthew Seeger
Defendant's Attorney:	Robert Shawn Ditsworth
Defendant:	Present
ASL Interpreter:	Jennifer Morse
Court Reporter:	Luz Franco

The ASL (American Sign Language) Interpreter is sworn.

This is the time set for Comprehensive Pretrial Conference.

IT IS ORDERED affirming the Settlement Conference date of DECEMBER 5, 2014 at 8:30 a.m. before the Settlement Conference on Demand Calendar.

As discussed in Court and per the formal Comprehensive Pretrial Statement:

A. STATUS OF PLEA NEGOTIATIONS. A plea has been extended. No *Donald* Advisement has been made. The parties have not participated in a Settlement Conference, but have one scheduled as set forth above.

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- B. Status of Disclosure: COMPLETE.
- C. Anticipated number of days for trial: 3 to 4
- D. Number of witnesses: SEVEN (7). No out of state witnesses; ONE (1) expert witness.
- E. Status of the interviews both cases: Seven Interviews have need to be completed. No depositions are required.
- F. An interpreter IS NOT required for this trial.
- G. Number of Jurors: 12 plus 2
- H. Aggravation Phase: YES.
- I. Special Jury Instructions: NONE ANTICIPATED.
- J. Lesser Included Offenses: No information
- K. Substantive Motions: No information
- L. Motions *in Limine*: No information

IT IS ORDERED affirming the Final Trial Management Conference date of DECEMBER 9, 2014, at 8:30 a.m. before the HON. DAVID B. GASS.

IT IS FURTHER ORDERED affirming the Firm Trial Date of DECEMBER 16, 2014, at 8:00 a.m. before the Master Calendar Assignment Judge in Courtroom 5B in the South Court Tower.¹ All subpoenaed witnesses are to report to Courtroom 5B in the South Court Tower for trial and will be directed to the trial court from there.

IT IS ORDERED directing the parties to file a JOINT PRETRIAL STATEMENT with this division no less than five business days prior to the Final Trial Management Conference. Also, to be delivered with the Joint Pretrial Statement:

A. A jointly-completed time and witness estimate list. The Court will use the list to predict the length of the trial for the jurors and to direct Counsel to follow the trial time limits

¹ The parties do not anticipate this matter will proceed to Trial.

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established. Any time limitation set will be reasonable presumptive limits subject to modification upon a showing of good cause.

B. A joint set of agreed upon Preliminary and Final Jury Instructions, including Preliminary Criminal RAJI or standard RAJI.

C. Separate sets of requested Instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993).

D. Proposed *Voir Dire* questions which the Court will give. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of voir dire.

E. Any juror notebooks. The Court encourages use of juror notebooks in appropriate cases. Stipulating the contents into evidence is necessary. Key exhibits may be included, along with diagrams, photographs, and timelines.

IT IS FURTHER ORDERED that disclosure and/or discovery shall be complete no later than seven (7) days prior to trial. Any party seeking further disclosure and/or discovery after the discovery deadline shall seek leave of the Court by motion supported by affidavit to extend the time for disclosure and/or discovery. Parties may extend the deadline by written stipulation which waives any objections to the late disclosure and/or discovery.

MOTIONS *IN LIMINE*. Any motions *in limine* shall be filed twenty (20) days before the FTMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972): "The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." See also, Ariz. Rules of Evidence, Rule 103(c). A written response to a motion *in limine* may be filed no later than ten (10) days thereafter. The Court will rule on the motions *in limine* without oral argument. If the Court wishes to hear argument, the argument will be heard at the morning of the FTMC.

PRETRIAL MOTIONS. All pretrial motions must be filed in writing 30 days before the FTMC. All motions must comply with Rule 35.1 including setting forth a sufficient factual basis for the motion. Failure to file a sufficient motion may result in the motion being denied without evidentiary hearing. See: Rule 16.1[c] Rule 16.2 [b]; *State v. Anaya* 170 Ariz. 436, 443 (1991); *State v. Wilson* 164 Ariz. 406, 407 (1990) and *State v. Alvarado* 121 Ariz. 485, 487 (1979).

All pretrial Motions shall be filed with this division.

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MARKING EXHIBITS. On the day of trial, immediately after receiving notification of the assigned trial judge, the trial lawyers or their knowledgeable assistants shall appear in the assigned trial division to present all exhibits. The exhibits shall be marked serially as they are listed in the LIST OF EXHIBITS which will be prepared by counsel and downloaded onto a disk which should be given to the clerk. The parties shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits shall be clearly marked to correspond with the list provided. Counsel is directed to meet in person to exchange the exhibits before coming to court. Counsel will make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits. Written stipulations to admit specified exhibits in evidence are encouraged. The Court assigned for trial will hear and rule upon objections at the time of trial. The rulings will be stated on the record, using exhibit numbers. All objections to known exhibits and witnesses must be made before or during the conference with the trial judge or will be deemed to have been waived. The Court will hear and rule upon objections at the FTMC. The rulings will be stated on the record, using exhibit numbers. All objections to known exhibits and witnesses must be made before or during the FTMC or will be deemed to have been waived.

IT IS FURTHER ORDERED that counsel shall be prepared to discuss the following at the time of the FINAL TRIAL MANAGEMENT CONFERENCE.

- A. Time limits in *voir dire*, opening statements, examination of witnesses and closing arguments.
- B. Stipulations for the foundation and authenticity of exhibits.
- C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and *voir dire*.
- D. Any special scheduling or equipment issues.
- E. Status of settlement of the case.

EXPEDITED DISCOVERY. If there are any issues as to the disclosure required under Rule 15, the parties shall attempt to resolve the issue under Rule 15.7 (b). After personal consultation, the party seeking relief shall file a written motion setting forth the issue and requested relief. This motion, the opposing parties' response, and any reply shall be filed with this division. All parties shall comply with Rule 15 disclosure orders. Failure to comply could result in sanctions which could include preclusion of witnesses, monetary fines, or any other sanction which is deemed appropriate.

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FAILURE TO APPEAR. A defendant's failure to appear at any final trial management conference, trial, evidentiary hearing, or any hearing set before the court may result in a bench warrant being issued for his or her arrest and the FTMC, trial, evidentiary hearing or any hearing set before the court may be conducted in the defendant's absence.

CONTINUANCE OF TRIAL. The trial date shall not be continued unless a written motion to continue is filed at least five days before trial. A continuance will not be granted unless the motion shows that extraordinary circumstances exist. (Rule 8.5, Rules of Criminal Procedure and guidelines thereto).

INTERPRETER. It is the responsibility of counsel to notify the Court before which a hearing will be held 48 hours in advance of any hearing needing an interpreter for a victim or witness (10 business days for any language other than Spanish).

Prior custody orders are affirmed.

LAST DAY REMAINS: 1/24/2015

9:47 a.m. Matter concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.